

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
CHARLOTTE BENNETT,

Plaintiff,

-v-

ANDREW M. CUOMO, MELISSA DEROSA, JILL
DESROSIERS, and JUDITH MOGUL,

Defendants.

CIVIL ACTION NO.: 22 Civ. 7846 (VSB) (SLC)

ORDER

SARAH L. CAVE, United States Magistrate Judge.

Before the Court is the motion of Plaintiff Charlotte Bennett (“Ms. Bennett”) seeking to quash two document subpoenas (the “Subpoenas”) served by Defendant Melissa DeRosa (“Ms. DeRosa”) on Ms. Bennett’s counsel, Debra Katz (“Ms. Katz”) and her law firm, Katz Banks Kumin LLP (“KBK”). (ECF No. 121 (the “Motion”). In brief, Ms. Bennett argues that the Subpoenas seek information protected in whole or in part by the attorney-client privilege and/or the work-product protection (the “Privileges”), neither of which have been waived. (Id.) In her opposition to the Motion and cross-motion to compel, Ms. DeRosa argues that Ms. Bennett has not met her burden to show that the Privileges apply, in particular, by failing to submit a privilege log, and, in any event, that Ms. Katz waived the Privileges as a result of statements she made during an interview with the Office of the New York Attorney General on March 15, 2021 (the “Interview”). (ECF No. 129).

When confronted with a privilege dispute, this Court’s usual practice is to receive a privilege log from the party asserting the Privileges and conduct an in camera review of a set of exemplars selected by the parties. See Monterey Bay Military Housing, LLC v. Ambac Assurance Corp., No. 19 Civ. 9193 (PGG) (SLC), 2023 WL 315072, at *1 (S.D.N.Y. Jan. 19, 2023); Bellridge

Capital, LP v. EvMo, Inc., No. 21 Civ. 7091 (PGG) (SLC), 2022 WL 17490961, at *2–3 (S.D.N.Y. Dec. 6, 2022); Flynn v. Cable News Network, Inc., No. 21 Civ. 2587 (GHW) (SLC), 2022 WL 17820854, at *1–2 (S.D.N.Y. Dec. 5, 2022); SGM Holdings LLC v. Andrews, No. 15 Civ. 8142 (PAC) (SLC), 2022 WL 3447542, at *2 (S.D.N.Y. Aug. 17, 2022); Brook v. Simon & Ptrs, LLP, No. 17 Civ. 6435 (GBD) (SLC), 2021 WL 5919207, at *1 (S.D.N.Y. Dec. 15, 2021); Coventry Cap. US LLC v. EEA Life Settlements Inc., No. 17 Civ. 7417 (VM) (SLC), 2021 WL 4312026, at *1 (S.D.N.Y. Sept. 22, 2021); Ciaramella v. Zucker, No. 18 Civ. 6945 (MKV) (SLC), 2021 WL 4219501, at *1 (S.D.N.Y. Sept. 16, 2021). Although Ms. Bennett complains of the burden of requiring her to prepare a privilege log, Ms. DeRosa is correct that Ms. Bennett bears the burden to demonstrate that the Privileges apply on a document-by-document basis and cannot satisfy that burden based on blanket or conclusory assertions. (ECF No. 129 at 2 (quoting, *inter alia*, von Bulow v. von Bulow, 811 F.2d 136, 146 (2d Cir. 1987), Bloomington Jewish Educ. Ctr. v. Vill. of Bloomington, N.Y., 171 F. Supp. 3d 136, 147 (S.D.N.Y. 2016)). The Court has concluded that a privilege log and *in camera* review of exemplar documents will assist in making the particularized determinations necessary for resolving the Motion. *See In re Grand Jury Subpoenas Dated March 24, 2003*, 265 F. Supp. 2d 321, 323–24 (S.D.N.Y. 2003) (conducting *in camera* review of documents); Calvin Klein Trademark Trust v. Wachner, 198 F.R.D. 53, 55 (S.D.N.Y. 2000) (relying on privilege log and *in camera* review of documents to resolve privilege dispute).

Accordingly, the Court orders as follows:

1. **December 1, 2023**, Ms. Bennett shall prepare and serve a privilege log (the “Log”) reflecting communications (i) responsive to the Subpoenas and (ii) dated between the

date on which Ms. Bennett engaged Ms. Katz and/or KBK to represent her in connection with the Interview and March 15, 2021.

2. By **December 8, 2023**, counsel for Ms. Bennett and Ms. DeRosa shall meet and confer and select 16 exemplars (the “Exemplars”) from the Log for the Court’s in camera review.
3. By **December 11, 2023**, counsel for Ms. Bennett shall submit to the Court the Log and the Exemplars through the Court’s file-share system, instructions for which the Court will email to Ms. Bennett’s counsel.

Dated: New York, New York
November 14, 2023

SO ORDERED.


SARAH L. CAVE
United States Magistrate Judge